

Defendants' motion identifies the documents to which it is directed, and if Plaintiffs agree not to use any of them at trial, then Defendants will withdraw their motion.

Plaintiffs' motion does not identify any of the documents it seeks to exclude, so Defendants are left to guess which exhibits may be at issue. To the extent Plaintiffs' motion is directed at documents such as the letter issued by the DOJ after it concluded its VantageScore investigation, Defendants point out that such documents are on a Defendant's exhibit list only to allow Defendants *to respond* to the many documents on Plaintiffs' list relating to the dismissed claims. *See* Docket No. 733. Defendants have no intention of introducing evidence such as the DOJ letter unless Plaintiffs are allowed to refer to the improper evidence on their exhibit list regarding dismissed claims.

Similarly, Plaintiffs' damages expert, Paul Meyer, continues to advance a damages estimate that includes potential damages related to the dismissed false advertising claims, and Defendants are entitled to respond to that. Mr. Meyer's expert report and subsequent updates propose single damages figures based on aggregating the damages resulting from alleged false advertising and alleged trademark infringement. But after the false advertising claims were dismissed, Mr. Meyer never adjusted his estimates to back out alleged false advertising damages. Defendants are entitled to cross-examine him on this flaw in his analysis. *See, e.g., Concord Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039, 1057 (8th Cir. 2000) (affirming exclusion of damages expert in part because expert's model "did not separate lawful from unlawful conduct").

For the reasons above, Plaintiffs' motion should be denied.

Respectfully submitted this 28th day of September, 2009.

Lindquist & Vennum PLLP

By: /s/ Mark A. Jacobson
Mark A. Jacobson (MN Bar #188943)
Christopher Sullivan (MN Bar #0343717)
LINDQUIST & VENNUM, P.L.L.P.
4200 IDS Center
80 South 8th Street
Minneapolis, MN 55402
(612) 371-3211(612) 371-3207 (facsimile)

M. Elaine Johnston
Robert A. Milne
Christopher J. Glancy
Jack E. Pace III
WHITE & CASE LLP
1155 Avenue of the Americas
New York, NY 10036-2787
(212) 819-8200
(212) 354-8113 (facsimile)

*Attorneys for Defendant Experian
Information Solutions, Inc. (and authorized
to sign on behalf of all Defendants)*

Lewis A. Remele, Jr. (MN Bar #90724)
Christopher R. Morris (MN Bar #230613)
BASSFORD REMELE
33 South Sixth Street, Suite 3800
Minneapolis, MN 55402
Tel: (612) 376-1601
Fax: (612) 333-8829

James K. Gardner
Ralph T. Russell
Dao L. Boyle
NEAL, GERBER & EISENBERG LLP
Two North LaSalle Street, Suite 2200
Chicago, IL 60602
Tel: (312) 269-8030
Fax: (312) 269-1747

*Attorneys for Defendant
Trans Union LLC*

Barbara Podlucky Berens (MN #209788)
Justi R. Miller (MN #0387330)
KELLY & BERENS
3720 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Tel: (612) 349-6171
Fax: (612) 349-6416

*Attorneys for Defendant
VantageScore Solutions, LLC*